

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

UNITED STATES OF AMERICA

Case No. 1:06-cr-44

vs.

Grand Rapids, Michigan  
April 6, 2009  
8:18 a.m.

MICHAEL WAYNE HESHELMAN,

Defendant.

HON. JANET T. NEFF

\_\_\_\_\_ /

DETENTION HEARING  
BEFORE THE HONORABLE HUGH W. BRENNEMAN, JR.  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 Grand Rapids, Michigan

2 Monday, April 6, 2009 - 8:18 a.m.

3 THE COURT: Good morning, gentlemen. We are here to  
4 resume the detention hearing in the matter of United States  
5 versus Michael Wayne Heshelman.

6 I understand the parties may want to produce some  
7 additional evidence and that's fine. Whoever would like to start  
8 may go first.

9 MR. MEKARU: Good morning, your Honor.

10 Your Honor, I believe where we left off is that we  
11 had a presentation of evidence by the government, took testimony,  
12 proffered evidence from the defense, and then the government  
13 asked to be permitted to present evidence in response and to call  
14 Brenda Moore as a witness.

15 THE COURT: All right.

16 MR. MEKARU: So we call Brenda Moore.

17 BRENDA MOORE, GOVERNMENT'S WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MR. MEKARU:

20 Q Good morning, Ms. Moore.

21 A Good morning.

22 Q My name is Daniel Mekar. I'm the prosecutor in this case.  
23 Could you please state and spell your name for the record?

24 A My name is Brenda Moore, B-r-e-n-d-a M-o-o-r-e.

25 Q Thank you. Ms. Moore, as I understand you are a resident

1 of Michigan. You live in Battle Creek?

2 A Correct.

3 Q How long have you lived in Michigan?

4 A Almost all my life.

5 Q And your brother is Michael Heshelman?

6 A Correct.

7 Q All right. Now, as I understand he's your only sibling?

8 A Correct.

9 Q So at this point in terms of your immediate family is he  
10 your only immediate surviving family from your parents, or are  
11 your parents still alive?

12 A Correct, my parents are deceased.

13 Q Okay. Now, counsel for your brother Mr. Heshelman had  
14 presented some information suggesting that you'd be willing to  
15 allow Mr. Heshelman to stay with you, correct?

16 A Correct.

17 Q Okay. Has he lived with you in the past?

18 A Yes.

19 Q In Michigan as well as in Florida?

20 A We never lived in Florida --

21 Q Okay.

22 A -- but he lived --

23 Q You had some property there?

24 A Yes.

25 Q That was this residence on Bowdoin?

1 A Correct.

2 Q Bowdoin Circle, Sarasota, Florida? All right. That was a  
3 home at some point that you perhaps with your husband had owned?

4 A Yes.

5 Q Okay. Now, this case may take some time, we're talking  
6 possibly -- well, if we go to trial it could be another six  
7 months, and it could be another few months even after that before  
8 there's a sentencing if Mr. Heshelman were convicted of these  
9 charges, so he could be living with you for a while. Is that  
10 going to cause any problems?

11 A I'd be happy to have him.

12 Q And, you know, as part of the I guess the concern here  
13 about securing his appearance, it's possible that the Court could  
14 I guess order that some sort of bond be posted on behalf of Mr.  
15 Heshelman.

16 Are you also willing to post some sort of bond or  
17 hold your house out as collateral for that bond?

18 A We'd have to see what kind of bond you're talking about.

19 Q Well, it's not going to be only five dollars and it's not  
20 going to be any more than you could afford, but would you be  
21 willing to put up your home?

22 A I'd have to know how much it is in order to do that and I'm  
23 not familiar with those proceedings, so until I know more about  
24 it I don't know if I can answer it correctly. I would do  
25 whatever I could do.

1 Q Okay. Well, and just so you understand when we're talking  
2 about somebody putting up their home essentially is that they're  
3 vouching for the person as being able -- that the defendant will  
4 show up in court and if he doesn't that your home could be taken  
5 by the government because he's basically a bail jumper. You  
6 understand that?

7 A I understand that. I don't have any problem with that.

8 Q Okay. So by doing that are you essentially -- you'd be  
9 essentially vouching for him that he would be coming into court;  
10 you understand that?

11 A I understand that.

12 Q And you'd be holding yourself out responsible for his  
13 appearance; you understand that?

14 A I understand that and don't have any problem with it.

15 Q Okay. Now, and you realize here that by doing that you  
16 could be putting yourself in an awkward position where you want  
17 to take care of family, and that's understandable, but if he were  
18 to start packing up, for example, and making indications that he  
19 was going to flee that could put you in a bit of a quandary  
20 between reporting your brother as a potential risk of flight and  
21 trying to support him and trying to protect him. Do you  
22 understand that?

23 A Yes, I do.

24 Q Okay. And are you going to report him if you see that he's  
25 preparing to leave?

1 A Well, we're all family; we'll do whatever it takes.

2 Q Okay. So the answer is "yes" you would report him?

3 A Yes. Yes.

4 Q Okay. Ma'am, has your brother given you large sums of  
5 money in the past?

6 A He has given me some money. I don't remember how much.

7 Q Well, in December 2000 did he give you a check for \$25,000?

8 A I don't remember that.

9 MR. MEKARU: May I approach, your Honor?

10 THE COURT: Yes.

11 (Government's Exhibit No. 6 marked.)

12 BY MR. MEKARU:

13 Q You have before you what's been marked as Exhibit No. 6.

14 Do you recognize the check?

15 A Yes, I do.

16 Q Okay. What is this check? What does it represent?

17 A I guess I don't understand your question.

18 Q Okay. Well, let's go through this then.

19 THE COURT: What was the date of the check?

20 MR. MEKARU: Sorry. It's December 7th, 2000. It's  
21 in the amount of \$25,000 made payable to Moore Homes, Inc., and  
22 it's drawn on the account of Kenneth Warner, and on the subject  
23 line there's for it looks like an "R. Heshelman." Perhaps a "B."

24 THE COURT: You may go ahead your question.

25 MR. MEKARU: Thank you.

1 THE COURT: I just wanted to know the date.

2 MR. MEKARU: Yes, sir. I just wanted to get a record  
3 on what's included.

4 THE COURT: Fine.

5 MR. MEKARU: Move for the admission of Exhibit No. 6.

6 MR. TRACY: No objection.

7 MR. MEKARU: All right.

8 THE COURT: Fine. Admitted.

9 (Government's Exhibit No. 6 admitted.)

10 BY MR. MEKARU:

11 Q All right. So we've gone over a little bit in terms of  
12 what the check indicates. Now, this is a \$25,000 check for your  
13 benefit, correct?

14 A Actually it was for the benefit of taking care of my  
15 father.

16 Q Okay. Now, this is a check from the account of Kenneth  
17 Warner. Now was this, in fact, monies that was given to you by  
18 your brother? I mean, Mr. Warner doesn't know your family so he  
19 wouldn't be taking care of your father.

20 A I don't know anything about that. I just know that my  
21 brother had said he would help me with the care of my father and  
22 so he sent me money.

23 Q Okay. You didn't know where the money came from?

24 A No.

25 Q Back in 2000 was your brother employed?



1 A As far as I know my brother's always been employed.

2 Q Okay. As an investment advisor?

3 A I don't know the title.

4 Q Okay.

5 MR. MEKARU: Your Honor, may I approach?

6 THE COURT: Yes.

7 (Government's Exhibit No. 7 marked.)

8 BY MR. MEKARU:

9 Q I have before you what has been marked as Exhibit No. 7.  
10 Do you recognize that check?

11 A Yes.

12 Q All right.

13 MR. MEKARU: Your Honor, the date of the check is  
14 March 7th, 2001. It's for \$60,000 payable to Moore Homes, again  
15 drawn on the account of Kenneth Warner, Attorney at Law.

16 Move for the admission of Exhibit No. 7.

17 MR. TRACY: No objection.

18 THE COURT: Admitted.

19 (Government's Exhibit No. 7 admitted.)

20 BY MR. MEKARU:

21 Q All right. Ms. Moore, again this is another check for your  
22 benefit?

23 A Well, I took care of my father for several years with the  
24 kind of verbal agreement that my brother would help me whenever  
25 he could.

1 Q Now, why are these checks written out to Moore Homes?

2 A Because that's the name of the assisted living home where  
3 my father stayed.

4 Q It's the same as your last name?

5 A Correct.

6 Q So is this your business?

7 A It is.

8 Q Oh, okay. So were there any other residents who were  
9 getting your assistance at Moore Homes?

10 A Correct.

11 Q How many other?

12 A That was in 2000. Probably about 15.

13 Q So rather than writing the checks out to you individually  
14 because your business isn't necessarily helping your father; your  
15 family is?

16 A My business was caring for my father. Moore Care Homes is  
17 a business that cares for elderly people and that's where my  
18 father resided.

19 Q Okay. I know. I just want to understand though that the  
20 check was written to the business and not to you personally?

21 A Correct.

22 Q A lot of times people have two parts of their lives. They  
23 have a personal life and their business life.

24 While there was a little bit of a blending here I'm  
25 just confused as to why the check wasn't written to you because

1 this is to take care of your personal family albeit it's for  
2 someone who is receiving services from your business. But for  
3 whatever reason he decided to send this directly to the business.

4 A He was being taken care of by Moore Homes. Moore Homes  
5 check can only be cashed through Moore Homes. It was deposited  
6 in Moore Homes.

7 Q Okay. Do you remember Special Agent Wetherbee?

8 A Not really.

9 Q Okay. Well, actually I don't know if he quite remembered  
10 you much either but he had been out to your home. I'd asked if  
11 he remembered what you looked and he shook his head, too. Okay.

12 He came out to see you in 2005, does that sound about  
13 right, in December?

14 A I think that's about right.

15 Q Okay. And he had come out to ask you about these checks as  
16 well. Do you remember that, that discussion?

17 A Actually, I don't remember that.

18 Q Okay, because he does.

19 A Okay.

20 Q He does remember that discussion.

21 Do you remember telling him that these checks  
22 represented the sale of a home, your house in Florida, and that  
23 this was money that you earned from the sale of that house?

24 A No, I don't remember that.

25 Q Well, let's see. Did at some point -- let's back up then.

1 At some point did Mr. Heshelman, your brother, sell a house for  
2 you?

3 A I don't remember all the circumstances of that. It's been  
4 quite a while ago.

5 We sold our house in Florida. Mike helped us but I'm  
6 not sure how that all occurred. It could have very well been  
7 that this money was from that but I don't remember that for sure,  
8 and I don't know who Mr. Kenneth Warner is.

9 Q Okay. But when you -- let me back up then. But you knew  
10 when you got the checks in Exhibit No. 6 and No. 7 that they were  
11 from your brother to help pay for your father?

12 A Yes.

13 Q Okay.

14 A I did know that.

15 Q So even if you didn't know who Mr. Warner was --

16 A Yeah.

17 Q -- you still knew what the money represented?

18 A Yes, I knew what the money represented.

19 Q Okay. Back to this conversation with Special Agent  
20 Wetherbee. There was an indication here in Exhibit No. 7, this  
21 First Investors Ban-Corp. Do you see that?

22 A I do.

23 Q Do you know what that is?

24 A It's the name on my brother's e-mail.

25 Q Is that his business?

1 A I don't -- I don't know. I don't know really anything  
2 about my brother's business.

3 Q Well, back in December 2005 you advised, "The money must  
4 have been from the sale of her house in Florida, provided the  
5 address of the home as 451 Bowdoin, B-o-w-d-o-i-n, Circle,  
6 Sarasota, Florida. Michael Heshelman sold the house for her and  
7 these were the proceeds of the sale." Do you remember anything  
8 like that?

9 A I wish I could. I just it's been so long ago I really  
10 don't remember all the circumstances.

11 Q Now, but you were a signatory on Mr. Heshelman's business  
12 account, First Investors Ban-Corp?

13 A Only for a brief period of time.

14 Q Why were you, I mean, you were a signatory on a business  
15 account and you don't know anything about the business?

16 A I only did it so that I could be available to help him with  
17 his checking account while he was in town, but I knew nothing  
18 about any of that.

19 Q Would it be fair to say that you, well, at least you  
20 indicated to Agent Wetherbee that you not only don't know much  
21 about his investments but you really didn't want to know much  
22 about his investments because you were concerned that his  
23 dealings were a little shady?

24 A No, I never said that.

25 Q Or that he dealt with shady individuals?

1 A I never said that either.

2 Q All right.

3 MR. MEKARU: May I approach, your Honor?

4 THE COURT: Mm-hmm.

5 (Government's Exhibit Nos. 8, 9 and 10 marked.)

6 BY MR. MEKARU:

7 Q I hand you what have been marked Exhibits 8, 9 and 10.

8 MR. MEKARU: One moment, your Honor, while I provide  
9 counsel with copies.

10 THE COURT: Fine.

11 MR. TRACY: Thank you.

12 THE COURT: May I see copies of those two checks,  
13 please that have been admitted?

14 THE WITNESS: Sure.

15 THE COURT: Thank you.

16 BY MR. MEKARU:

17 Q Okay. Ms. Moore, have you had an opportunity to take a  
18 look at Exhibits 8, 9 and 10?

19 A Mm-hmm.

20 Q Is that a "yes?"

21 A Yes.

22 Q Thank you. Exhibit No. 8, if you look at this, it's a  
23 warranty deed, and the date of that is in June of 1999?

24 A Mm-hmm, I see that.

25 Q Okay. And the address that is associated with this

1 warranty deed is 451 Bowdoin Circle?

2 A I see that.

3 Q Okay. So is this the deed for the house that you owned in  
4 Florida?

5 A I don't know that I've ever seen it. It says "warranty  
6 deed" but I don't know that I've ever seen it. Mr. --

7 Q Okay. But at least is it fair to say that this is a --

8 THE COURT: Excuse me, she was still answering.

9 MR. MEKARU: Sorry, your Honor.

10 THE WITNESS: Mr. Gordon may have had it but I don't  
11 think I ever had it.

12 BY MR. MEKARU:

13 Q Okay. If you'd take a look at the transaction, would it be  
14 fair to say that Donald F. Moore and Brenda K. Moore, husband and  
15 wife, are referenced?

16 Towards the top around the area of the date? This is  
17 a warranty deed, warranty deed made and executed 21st day of June  
18 A.D., 1999.

19 A Oh, I see it now.

20 Q Okay. It's a lot of verbiage within the paperwork. But  
21 would the date of this transaction coincide about the time that  
22 you purchased that property?

23 A I'm not sure I understand that.

24 Q Okay. Well, do you remember buying the house in Florida?

25 A Yes, I remember buying the house in Florida?

1 Q Okay.

2 A But I don't remember what year we bought the house in  
3 Florida. If I'd have had an opportunity to look that up I could  
4 have but, you know, we've had many properties and so I don't  
5 really remember the exact date.

6 Q Okay. Look at the next document, Exhibit No. 9. This is  
7 another warranty deed.

8 MR. MEKARU: Oh, your Honor, I'm sorry. Move for  
9 admission of -- let me do this en masse. Move for the admission  
10 of Exhibit Nos. 8, 9 and 10?

11 MR. TRACY: No objection.

12 THE COURT: All right. Nos. 8, 9 and 10 will be  
13 admitted.

14 (Government's Exhibit Nos. 8, 9 and 10 admitted.)

15 MR. MEKARU: Thank you.

16 BY MR. MEKARU:

17 Q All right. Exhibit No. 9 is another warranty deed?

18 A Yes, I see it.

19 Q It states, this indenture is made as of the 27th day of  
20 August, 2003, between Donald F. Moore and Brenda K. Moore,  
21 husband and wife, with a mailing address in Battle Creek, and  
22 Michael W. Heshelman, with the mailing address of the 451 Bowdoin  
23 Circle. Do you see that?

24 A I do.

25 Q Okay. So at some point did you sell the house to your



1 brother?

2 A With the intention of him selling it so that we could get  
3 rid of it because we weren't going to be in Florida any longer.

4 Q Was this a seasonal residence?

5 A Yes.

6 Q Okay.

7 A We rented it out when we weren't there.

8 Q So was there any real money exchanged in this transaction?

9 A I really don't remember. If the one check was for that  
10 then -- but I just really don't remember. I just really don't  
11 remember all that.

12 Q Now, in some of the paperwork and research that was done by  
13 the probation office there's some reason to believe this  
14 residence was worth \$1 million. Maybe that's closer to today's  
15 value. Does that sound about right?

16 A Well, we sure didn't buy it for that.

17 Q Okay. Do you remember how much you bought it for?

18 A I think it was around 250,000, somewhere in there.

19 Q Okay. Because if you go -- well, so this was a significant  
20 investment, though, even at 250,000?

21 A Well, not any more significant than any other properties we  
22 had bought.

23 Q Well, and it sounds like you're pretty sophisticated about  
24 buying property in Florida and --

25 A Actually, no, we weren't that sophisticated. It just

1 happened. We found it in the paper.

2 Q Or experienced then?

3 A Yeah. No, not really.

4 Q Okay. How many properties have you owned in Florida?

5 A Oh, just that one and another one that we bought prior to  
6 that one, but it was for a leased option and we decided not to  
7 opt.

8 Q So only two?

9 A Yeah.

10 Q Okay. So this only the second property you purchased and  
11 you don't remember how much you sold it for?

12 A No, I don't. I have all that at home but, no, not off the  
13 top of my head.

14 Q Well, ballpark?

15 A No, I don't.

16 Q Did you make money or lose money?

17 A Well, I don't think we made a whole lot of money.

18 Q All right. So in Exhibit No. 10 this house is being sold  
19 in October 2004 by Michael W. Heshelman to a Mr. and Mrs. Monzon,  
20 M-o-n-z-o-n. Do you have any knowledge of that transaction?

21 A I don't know who they are.

22 Q Did you receive the proceeds of that sale?

23 A I don't know.

24 Q So all you know is that you had signed over this house, a  
25 \$250,000 house, to your brother and you don't know what happened

1 to the money at all?

2 A My husband and I at that time had some other financial  
3 things that we had to take care of, and the Florida house was the  
4 least interest at that time and so I just asked my brother if he  
5 would help me with it.

6 Q These other concerns, were you need of money?

7 A Well, I just had business in Michigan and I no longer had  
8 interest in Florida.

9 Q You needed money?

10 A Doesn't everyone? I mean, we had business things we needed  
11 to take care of, taxes and things like that, and so we tried our  
12 best to keep all our interest in Michigan, and if my brother  
13 could help me sell the house then that would be one other  
14 financial obligation I wouldn't have because we weren't able to  
15 go down there very often.

16 Q And, ma'am, the reason why I'm asking these questions about  
17 this property comes back to the statement reported by Agent  
18 Wetherbee all the way back to 2005 about what these checks  
19 represent.

20 A The checks represented the care for my father is all I  
21 knew.

22 Q Okay. Well, that wasn't what you had told the agent back  
23 in 2005.

24 MR. TRACY: Your Honor, there's a little bit of  
25 arguing going on here. Obviously she was mistaken in what she

1 said to Wetherbee back in '05 or '06 because the timing doesn't  
2 jive based on what's right in front of the Court.

3 So I don't think we should argue with the witness.  
4 She's done the best she can in terms of remembering. I don't  
5 think it helps to argue.

6 THE COURT: All right. Well, your point is well  
7 taken on arguing.

8 You can ask questions.

9 MR. MEKARU: Yes, your Honor.

10 BY MR. MEKARU:

11 Q I'm not trying to, forgive me, I'm not trying to argue.  
12 I'm just trying to sort out here the difference between your  
13 statement today and what was reported back in 2005, and this is a  
14 significant amount of money that we're talking about, \$85,000.

15 THE COURT: I'm sorry, where does the number  
16 "\$85,000" come from?

17 MR. MEKARU: The total, 60,000 plus 25,000.

18 THE COURT: I don't know what you're talking about.

19 MR. TRACY: The two checks.

20 MR. MEKARU: The two checks. Forgive me, your Honor.

21 THE COURT: I see. All right. I'm sorry.

22 MR. MEKARU: I'm sorry.

23 BY MR. MEKARU:

24 Q The two checks.

25 A And your question?

1 Q So I'm asking with respect to \$85,000 -- well, let's see.

2 Did you get -- you're indicating today you don't  
3 remember getting any money whatsoever from the sale of the house,  
4 but Agent Wetherbee had no idea that you had any sort of property  
5 in Florida, so --

6 MR. TRACY: Objection, your Honor. One, she's not  
7 indicated she didn't get any money. And, two, I don't know what  
8 Mr. Wetherbee knew and didn't know.

9 THE COURT: Sustained.

10 MR. MEKARU: All right.

11 BY MR. MEKARU:

12 Q So let's see. When Mr. Heshelman gave you the \$60,000  
13 check did he indicate to you that he had come into some money?

14 A I never asked my brother about any of his finances.

15 Q Would it surprise you at all if that money came from Alan  
16 Moody, one of the named victims in this case?

17 A I don't know Alan Moody.

18 Q The agent had asked whether you knew where Mr. Heshelman  
19 was back in 2005. At that point was he residing in Switzerland?

20 A That's what I told the agent that I recall.

21 Q And according to some of the paperwork here Mr. Heshelman  
22 had been living in Switzerland from approximately 2003 until  
23 early this year. Does it sound about right?

24 A It sounds about right.

25 Q Would he come home -- in fact, in 2003, 2004, would he come

1 back home to the states with any regularity?

2 A No.

3 Q But he did come back at times, correct?

4 A The last time that I remember was either 2002 or 2003. I  
5 can't remember for sure but I think it was around Christmas, one  
6 of those times.

7 Q Did he ever tell you that he wanted to stay out of the  
8 country?

9 A No.

10 Q Or that he was worried about being arrested?

11 A No.

12 Q In December 2008 did you know where he was living?

13 A Is that when the agent came; is that what you're saying?

14 Q No, I'm sorry, 2008, earlier, this Christmas?

15 A I'm sorry, repeat that again.

16 Q Did you know where Mr. Heshelman was living in December  
17 2008?

18 A Yes, I knew he was in jail.

19 Q Before he was arrested. All right, listen to this. How  
20 about November 2008, do you know where he was living?

21 A No, I never knew where he was living. I always was able to  
22 get a hold of him by e-mail and telephone and I didn't know.

23 Q So even if you'd been contacted by the FBI you wouldn't  
24 have been able to --

25 A No.

1 Q -- provide any address?

2 A No.

3 MR. MEKARU: No further questions.

4 THE COURT: May I see the exhibits, please?

5 Mr. Tracy, you may proceed.

6 MR. TRACY: Your Honor, is it possible once you're  
7 done, can I have the witness have the exhibits back because I  
8 just had a couple follow-up things to go over?

9 THE COURT: Certainly. I will hand all five exhibits  
10 back to the witness.

11 MR. TRACY: Thank you, your Honor.

12 MR. MEKARU: Your Honor, I do have extra copies if  
13 you want to have another set for yourself.

14 THE COURT: No, I don't need one.

15 CROSS-EXAMINATION

16 BY MR. TRACY:

17 Q Ms. Moore, could I ask you a favor, from 6, 7, 8, 9, 10  
18 kind of in order so you can see them all at once, can you just  
19 kind of put them out in front of you? Does that look okay,  
20 Brenda?

21 A Yes, that's fine.

22 Q Okay. Good morning, by the way.

23 A Good morning.

24 Q Exhibit 6 first, in the subject line where I believe it's  
25 an R., first initial R. Heshelman from this December 2000 check,

1 does that mean something to you? What is R. Heshelman?

2 A "R" is Robert.

3 Q Was that your father?

4 A Yes.

5 Q Okay. We won't go into too many details. I'm sorry to  
6 upset you. And I take it your father was still alive, probably  
7 passed away maybe in 2001; does that sound about right?

8 A My father passed away on December 12th, 2000.

9 Q 2000, okay. So the checks that came in here, the one in  
10 December of 2000 and then on Exhibit 7, one shortly thereafter in  
11 March of 2001, those were close in time to when your father was  
12 being taken care of by your home, Moore Homes, and then  
13 ultimately deceased?

14 A Yes.

15 Q Okay. Now, the 302 that counsel was referring to where  
16 apparently Agent Wetherbee came out to meet with you, it's dated  
17 in terms of transcription 12/14 of 2005, so that would have been  
18 nearly five years after your father's passing, correct?

19 A Correct.

20 Q Prior to your father's passing did your mother also stay  
21 under your care at Moore Homes?

22 A My mother was in her own home but I cared for her there.

23 Q Okay.

24 A And so did my brother.

25 Q So your brother also came up from Florida to help with



1 that; is that correct?

2 A That's correct.

3 Q And your mother passed in the '90s sometime?

4 A April the 5th, 1996.

5 Q Okay. So do you recall whether your brother also assisted  
6 you or perhaps directly to a facility in terms of your mother's  
7 care as well?

8 A I'm not sure I understand that, Chris.

9 Q Did he help with the care in terms of financially as well  
10 for your mother's care?

11 A Not really. I did most of that, and then when daddy needed  
12 care then he helped with that.

13 Q Okay. And that was kind of an understanding between the  
14 two of you --

15 A Right.

16 Q -- brother and sister? Okay.

17 Now, according to the 302 that Agent Wetherbee wrote  
18 up, when you made statements back in 2005 according to his  
19 version of the statement, your memory back then was you thought  
20 that these two checks, Exhibit 6 and 7, may have tied to the sale  
21 of your home down in Florida. Do you recall questions about that  
22 just a minute ago from counsel?

23 A I don't remember him asking me that. I don't remember  
24 answering in that way. I remember him talking to me about the  
25 check but I don't -- I really don't recall that.

1 Q Okay. But now when we look at -- when we have them all in  
2 front of us, it at least appears by Exhibit 8 that most likely  
3 you and your husband purchased the property down in Sarasota in  
4 1999, June of '99?

5 A Yes.

6 Q And it at least appears by Exhibit 9 that in August of '03  
7 some sort of sale or transfer occurred between you and your  
8 husband over to Michael of that same residence, correct?

9 A Yes.

10 Q Now, that would be several years after your father's death,  
11 correct?

12 A Yes.

13 Q So if the sale occurred and any monies were exchanged  
14 between Michael and you and your husband, that would have been  
15 way after the time that these two checks came in on Exhibit 6 and  
16 7, correct?

17 A Yes.

18 Q So it'd have been really nearly impossible for any of the  
19 proceeds from the sale pertaining to Exhibit 9 to have anything  
20 to do with the two checks, Exhibit 6 and 7, correct?

21 A Correct.

22 Q And then to the extent there was any proceeds that came  
23 from the sale when Michael sold it to the Monzons -- if I'm  
24 saying the that right, M-o-n-z-o-n -- on Exhibit 10 that appears  
25 to have occurred in October of '04, correct?

1 A Correct.

2 Q And again way after the time that these two checks occurred  
3 in Exhibit 6 and 7?

4 A Correct.

5 Q And so to your best recollection today the two checks that  
6 pertain, Exhibit 6, 25,000, and Exhibit 7, 60,000, your best  
7 memory is that those pertain to assisting with your father's  
8 care?

9 A Correct.

10 Q Is there anything else you'd like to add for the Court with  
11 respect to that?

12 A No.

13 MR. TRACY: Nothing further, your Honor.

14 THE COURT: Can I see the exhibit?

15 Mr. Mekar, anything further?

16 REDIRECT EXAMINATION

17 BY MR. MEKARU:

18 Q So, Ms. Moore, did you treat the monies then from -- well,  
19 just so I'm clear again. Forgive me for bringing up this subject  
20 again, but with your father's passing you indicated it was  
21 December 12th roughly?

22 A Yes.

23 Q 2000?

24 A Yes.

25 Q The second check is on March 2nd, 2001. Are you still

1 saying it was related to the expenses associated with his care?

2 A I took care of my father for almost three years and so that  
3 was I'm sure what my brother felt I deserved because of the care  
4 that I gave him.

5 Q Was there any sort of building associated with that or any  
6 sort of --

7 A Just the deposit in Moore Homes.

8 Q So this would be considered as a gift as to you or income  
9 to Moore Homes?

10 A It's income to Moore Homes for the care of my father.

11 Q Okay. That's true also with the \$25,000?

12 A That's correct, they both went into Moore Homes.

13 Q All right. Thank you.

14 MR. TRACY: Nothing further from me.

15 THE COURT: All right.

16 Let me just ask you a couple of questions. Let's go  
17 back to these checks, No. 6 and 7. You don't know who Kenneth  
18 Warner is?

19 THE WITNESS: No, I don't, sir.

20 THE COURT: Never heard his name?

21 THE WITNESS: No.

22 THE COURT: Okay. Did you make any inquiry of your  
23 brother why Kenneth Warner was sending these checks?

24 THE WITNESS: No, I didn't.

25 THE COURT: You just deposited them?

1 THE WITNESS: Yes.

2 THE COURT: Let me show you Government's Exhibit No.  
3 7. It looks like there's an endorsement on the back of the  
4 check. Do you know whose name that is?

5 THE WITNESS: That says "Moore Homes."

6 THE COURT: All right. And then on the first check,  
7 Government's Exhibit No. 6, that's your signature, Brenda Moore,  
8 on the back of the check?

9 THE WITNESS: My signature and my husband's  
10 signature. We're both under Moore Homes.

11 THE COURT: Okay. Now, you said speaking of the  
12 homes and your husband, you said you'd be willing to put up your  
13 house. Is that in your name or is it in your name and your  
14 husband as well as yourself?

15 THE WITNESS: It's in both our names.

16 THE COURT: And he'd be willing to put up the house  
17 as well?

18 THE WITNESS: Yes, he would.

19 THE COURT: Knowing that if defendant failed to  
20 appear you'd lose the house?

21 THE WITNESS: Correct.

22 THE COURT: Government's 8, 9 and 10 are these  
23 warranty deeds, and just so that I have these straight 8 is the  
24 warranty deed from someone called Designer Homes of Sarasota and  
25 the deed is to you and your husband; is that correct?

1 THE WITNESS: Correct.

2 THE COURT: So is this a brand new home?

3 THE WITNESS: No.

4 THE COURT: Who's Designer Homes, Inc.?

5 THE WITNESS: Down there on the bottom of it says

6 "William Gardner," I think "Garden" or "Gardner."

7 THE COURT: Well, who is Designer Homes of Sarasota?

8 THE WITNESS: William Gardner.

9 THE COURT: Is that a company that sells homes?

10 THE WITNESS: No. It's just, I don't know, maybe  
11 it's just his, I don't know how to explain it. He did some real  
12 estate and that was his home and so he sold that to my husband  
13 and I.

14 THE COURT: Okay. And you said I think you testified  
15 that it was for about \$250,000?

16 THE WITNESS: Yes, I believe so.

17 THE COURT: All right. And then Government's Exhibit  
18 9 is a deed between you and your husband and the defendant. And  
19 you give title to your brother?

20 THE WITNESS: Correct.

21 THE COURT: Aside from the \$10.00 that it says here  
22 that he paid you which you always see on any deed, did he pay you  
23 any other money at that time?

24 THE WITNESS: No.

25 THE COURT: You testified the purpose of this deed

1 was to put it in his name so he could sell it down in Florida?

2 THE WITNESS: Correct.

3 THE COURT: And then Government's Exhibit No. 10  
4 shows that, in fact, he did sell this property on October 19th,  
5 2004, to the Monzons. That's your understanding?

6 THE WITNESS: That's what it says but I don't know --

7 THE COURT: You said you didn't know that?

8 THE WITNESS: Yeah, I don't know.

9 THE COURT: Now, you would have gotten the money from  
10 that, I take it, since you put the -- you bought the house in the  
11 first place, you hadn't received any money from your brother when  
12 he put the house in his name, so you would have received the  
13 benefit of the proceeds from this deed; is that right?

14 THE WITNESS: You know what, I don't really remember  
15 but I have all that at home. If the Court needs that I can  
16 provide it.

17 THE COURT: I'm not asking the amount in this  
18 question. I'm asking as I understand the concept of the sale you  
19 bought the house with your husband?

20 THE WITNESS: Yes.

21 THE COURT: You put the title in your brother's name  
22 to sell it for you?

23 THE WITNESS: Yes.

24 THE COURT: He sold it for you?

25 THE WITNESS: Yes.

1 THE COURT: And the logic would be that you would  
2 received the proceeds from it.

3 THE WITNESS: If there was any equity in it. We had  
4 it a short time.

5 THE COURT: Yes. Now, you had it for how long?

6 MR. TRACY: Roughly four years, your Honor.

7 THE COURT: About four years. So you don't recall  
8 getting any money back?

9 THE WITNESS: No, I don't because we bought it on a  
10 land contract in the beginning from the Designer Home man, and  
11 then --

12 THE COURT: He gave you a warranty deed for it.

13 THE WITNESS: Yes.

14 THE COURT: That's not a land contract.

15 THE WITNESS: No. But he did that then we took it to  
16 the bank so we had it before then for I think a year.

17 THE COURT: Well, you say you bought it in '89 or '98  
18 rather than '99.

19 THE WITNESS: Again I really can't remember all the  
20 dates to help you out but if you need me to provide that I can.

21 THE COURT: Well, normally you don't get a warranty  
22 deed on a land contract until it's paid off.

23 MR. TRACY: I think that's what she's saying, your  
24 Honor. She bought it on a land contract.

25 THE COURT: Okay, so it was paid off in 1999?



1 THE WITNESS: No, we never paid it off.

2 MR. TRACY: She took a mortgage.

3 THE COURT: Well, apparently --

4 THE WITNESS: I took a mortgage for it.

5 THE COURT: I see. I see. But you paid off the  
6 seller, the guy that gave it to you?

7 THE WITNESS: The mortgage company paid off the  
8 seller.

9 THE COURT: Yes, okay.

10 THE WITNESS: Yeah.

11 THE COURT: So you then owed the bank?

12 THE WITNESS: Yes.

13 THE COURT: All right. And you don't know how much  
14 you owed on the house?

15 THE WITNESS: Well, in the beginning it was around  
16 \$250,000, I think, but I don't have any idea really how that all  
17 worked out as far as what it was sold for or whatever after my  
18 brother took care of it for us.

19 THE COURT: Well, you --

20 THE WITNESS: Because we didn't have very much equity  
21 into it at all.

22 THE COURT: There's the period between 1999 and 2004,  
23 which is about a five-year period here, isn't it? It was titled  
24 in your name and your husband's name.

25 THE WITNESS: Yes.

1 THE COURT: So you were responsible for taking care  
2 of it?

3 THE WITNESS: Yes.

4 THE COURT: Not your brother?

5 THE WITNESS: Right.

6 THE COURT: All right. And during that time did you  
7 have any equity in the house?

8 THE WITNESS: Well, at 11 percent I think not.

9 THE COURT: Okay. The most the mortgage could have  
10 been for was 250,000, isn't that right?

11 THE WITNESS: I think so, yes.

12 THE COURT: All right. This is the property at 451  
13 Bowdoin Circle?

14 THE WITNESS: Bowdoin, mm-hmm.

15 THE COURT: Bowdoin Circle, okay. Now, the pretrial  
16 services report that the Court had received shows that according  
17 to Lexis Nexis records which keep track of these things, public  
18 records, that house was sold in October of 2004 for \$1 million.  
19 Are you aware of that?

20 THE WITNESS: No.

21 THE COURT: Did you receive \$1 million?

22 THE WITNESS: No.

23 THE COURT: Did you receive \$750,000?

24 THE WITNESS: No.

25 THE COURT: All right. You don't know where that

1 750,000 went?

2 THE WITNESS: I don't know that it sold for that.  
3 Other than what it says there I don't know anything about it.

4 THE COURT: All right. If these Lexis Nexis records  
5 are correct you don't know where the money went?

6 THE WITNESS: I don't know anything about it.

7 THE COURT: And you don't recall if you got any money  
8 or not?

9 THE WITNESS: No.

10 THE COURT: I understand you had some financial  
11 problems up here. It sounds to me like that's what you testified  
12 to. Wouldn't you be concerned about what happened to the money  
13 from your house that you owned in Florida?

14 THE WITNESS: We didn't have any equity in it, sir,  
15 in so, therefore, I wasn't worried about it. I just knew that I  
16 couldn't continue the large payments on it, and the company that  
17 was trying to rent it out wasn't doing a very good job, and so my  
18 husband decided that we just would see if my brother could sell  
19 it for us.

20 THE COURT: All right. You stated that you didn't  
21 know your brother's address in Switzerland. Did you know what  
22 city he lived in?

23 THE WITNESS: Yes.

24 THE COURT: What city was that?

25 THE WITNESS: Zurich. Couldn't think of it, sorry.

1 THE COURT: Okay. Obviously you never visited him;  
2 is that correct?

3 THE WITNESS: No.

4 THE COURT: You never sent him anything in the mail?

5 THE WITNESS: One time I did, I sent a Christmas  
6 gift, but I don't remember. I never wrote him or anything like  
7 that. We e-mailed every day mostly.

8 THE COURT: Do you remember how you sent him a gift,  
9 where you addressed it to?

10 THE WITNESS: No, I don't. I think he moved several  
11 times so I don't know. I only had one maybe when he first moved  
12 there.

13 THE COURT: All right.

14 Any further questions based on the ones that I've  
15 asked?

16 MR. MEKARU: Your Honor, may I approach?

17 THE COURT: Yes.

18 (Government's Exhibit No. 11 marked.)

19 MR. MEKARU: Your Honor, I'm just showing it to  
20 counsel. I didn't intend to introduce this so I didn't have  
21 extra copies. I approach the witness with what's been marked as  
22 Exhibit No. 11.

23 BY MR. MEKARU:

24 Q Looking over your shoulder, this is a Grantors of Sarasota  
25 County Parcels. There's a parcel ID. I'll represent to you that

1 that parcel ID matches the parcel ID of the property we're  
2 talking about, this Bowdoin address, okay. Will you accept that?  
3 I can also get the other documents if you'd like.

4 A No. This is -- I understand what you're saying.

5 Q Okay. All right. The grantor is Michael Heshelman. The  
6 sales date is October 19th, 2004. You see the amount of the  
7 sale?

8 A Mm-hmm.

9 Q What is that?

10 A It says one million.

11 Q Okay. Will you show that to the --

12 A Oh, mm-hmm.

13 THE COURT: Mm-hmm, all right.

14 MR. MEKARU: Thank you.

15 THE COURT: You're moving to admit this?

16 MR. MEKARU: Sorry, your Honor. Yes, sir.

17 MR. TRACY: Your Honor, I don't know where that comes  
18 from. I don't know, you know, it appears to be off of some  
19 website. I mean, I know we can have hearsay but I don't know --

20 THE COURT: Are you objecting to it or not?

21 MR. TRACY: Yes.

22 THE COURT: On what basis?

23 MR. TRACY: I don't know what the website is. I  
24 don't know who obtained it. I don't have any foundational  
25 information at all.

1           You know, this witness obviously can't verify the  
2     authenticity of it. She's looked at it. So I object on all of  
3     those bases.

4           THE COURT: Counsel?

5           MR. MEKARU: Your Honor, if you'd like I can call the  
6     agent to establish the foundation of the request for the research  
7     on this record.

8           THE COURT: We can wait until then.

9           MR. MEKARU: Thank you.

10          MR. TRACY: I have no other questions, your Honor, in  
11     case we're waiting for me.

12          THE COURT: Since we have the defendant's only  
13     sibling on the stand let me ask a couple other questions that.

14          How do you spell Heshelman?

15          THE WITNESS: Are you speaking to me, sir?

16          THE COURT: Yes.

17          THE WITNESS: H-e-s-h-e-l-m-a-n.

18          THE COURT: Try that again?

19          THE WITNESS: H-e-s-h-e-l-m-a-n.

20          THE COURT: Okay. Have you ever known your brother  
21     to spell it with an "R", Hershelman instead of Heshelman?

22          THE WITNESS: No.

23          THE COURT: Have you ever known him to spell it with  
24     an "I," Hesheiman?

25          THE WITNESS: No.

1 THE COURT: Are you familiar with the name "Hersher?"

2 THE WITNESS: No.

3 THE COURT: Did you know that your brother, according  
4 to the police records that the Court has been furnished,  
5 absconded from probation in the State of Florida back in February  
6 of 1996?

7 THE WITNESS: No.

8 THE COURT: Did you know he was on probation back in  
9 1996?

10 THE WITNESS: I did know.

11 THE COURT: What was he on probation for?

12 THE WITNESS: I don't know.

13 THE COURT: When did you first know he was on  
14 probation?

15 THE WITNESS: I guess when he first got on he told me  
16 about it, but --

17 THE COURT: You don't remember the time frame?

18 THE WITNESS: No, I don't remember the time frame.

19 THE COURT: And you have no idea what the charges  
20 were?

21 THE WITNESS: No.

22 THE COURT: Did you know your brother's address when  
23 he was down in Florida?

24 THE WITNESS: 451 Bowdoin.

25 THE COURT: Did you rent the property to him down

1 there?

2 THE WITNESS: No, he just stayed there.

3 THE COURT: All right. That was in 1998 when you  
4 bought the property?

5 THE WITNESS: I believe so.

6 THE COURT: Do you know what his address was prior to  
7 that time?

8 THE WITNESS: No.

9 THE COURT: All right.

10 Unless the parties have further questions, may this  
11 witness be excused?

12 MR. MEKARU: Yes, your Honor.

13 MR. TRACY: Yes, your Honor. Thank you.

14 THE COURT: And thank you very much.

15 THE WITNESS: Thank you.

16 MR. MEKARU: Your Honor, I'd like to recall Special  
17 Agent Wetherbee.

18 TIMOTHY WETHERBEE, GOVERNMENT'S WITNESS, SWORN

19 DIRECT EXAMINATION

20 BY MR. MEKARU:

21 Q Agent Wetherbee, when we were last in court, after we got  
22 done we had some discussion about securing information about the  
23 property we were talking about, this 451 Bowdoin Circle in  
24 Sarasota, Florida?

25 A That's correct.



1 Q Did you make a request of your staff at the FBI to do a  
2 record search for the property?

3 A I did.

4 Q And in response were they able to produce online and deed  
5 records as well as online records regarding the property?

6 A Yes.

7 Q And those documents, are they represented by Exhibits 8, 9  
8 and 10 regarding the deeds?

9 A Yes.

10 Q In addition, were you able to do some sort of financial  
11 checks to see if you could find out the transaction price  
12 associated with some of the sales?

13 A Correct.

14 Q And some of that information is indicated in Exhibit No. 11

15 A Yes.

16 MR. MEKARU: Your Honor, may I approach again?

17 THE COURT: Yes.

18 MR. MEKARU: I'm going to mark this as Exhibit No.  
19 12. Because we did this incrementally I'll do two separate  
20 exhibits.

21 (Government's Exhibit No. 12 marked.)

22 BY MR. MEKARU:

23 Q Were Exhibit No. 11 and No. 12 together?

24 A Yes.

25 Q And these are records that were collected by the FBI?

1 A Yes.

2 Q Exhibit No. 12, does that provide further detail regarding  
3 the property on Bowdoin?

4 A Yes, that's more detailed information on that property.

5 Q Including there perhaps the current resident or somebody's  
6 actually identified as the property owner?

7 A Yes, on this one it's identified as Kristen Rocks.

8 Q All right. As well as some description regarding the date  
9 of construction of the property as well as the, actually, the  
10 footprint of the house?

11 A Yes.

12 Q And the square footage?

13 A Yes.

14 Q There's some indication toward the bottom in the small  
15 print that much of this information was gleaned from the records  
16 of the county?

17 A From the Sarasota County Property Assessor's Office.

18 Q Okay. And have you seen the pretrial services report?

19 A Yes.

20 Q All right. And it indicates according to Lexis Nexis that  
21 the value of the property and the value of the sale was  
22 approximately \$1 million?

23 A Yes.

24 Q Does that coincide with what was represented on Exhibit No.  
25 11?

1 A Yes.

2 MR. MEKARU: All right. Move for the admission of  
3 Exhibit No. 12 and No. 11.

4 THE COURT: Mr. Tracy, have you seen No. 12?

5 MR. TRACY: Just briefly I did, yes.

6 THE COURT: All right. Objection?

7 MR. TRACY: Can I see them again just real quick,  
8 your Honor?

9 THE COURT: Of course.

10 MR. TRACY: Is it okay if I approach?

11 THE COURT: Certainly.

12 MR. TRACY: Thank you. No objection, your Honor.

13 THE COURT: All right. Thank you. No. 11 and 12  
14 will be admitted.

15 (Government Exhibit Nos. 11 and 12 admitted.)

16 BY MR. MEKARU:

17 Q Just two more quick areas I want to cover, Agent Wetherbee.  
18 Prior to your discussion in talking to Ms. Moore in 2005, did you  
19 have any knowledge of Mr. Heshelman owning property in Florida?

20 A I did not, no.

21 Q Did you know of this Bowdoin address?

22 A No.

23 Q Or the number?

24 A No.

25 Q Did you examine the banking records for Mr. Kenneth Warner?

1 A Yes, I did.

2 Q The money that's represented by the \$65,000 check, were you  
3 able to trace back the source of those funds?

4 A It was \$60,000.

5 Q I'm sorry, \$60,000?

6 A Yes.

7 Q Where did the money come from?

8 A It was a deposit made the same day by Mr. Alan Moody.

9 Q One of the named victims in this case?

10 A Yes.

11 Q Nothing further. Thank you.

12 MR. TRACY: Your Honor, may I approach, since I only  
13 have one copy of 11 and 12.

14 THE COURT: Certainly. Go ahead. And if you want --  
15 I'm sorry, you wanted --

16 MR. TRACY: Thank you, your Honor. I'm sorry to keep  
17 stealing them back from you.

18 THE COURT: You're welcome to look at them.

19 MR. TRACY: Okay.

20 CROSS-EXAMINATION

21 BY MR. TRACY:

22 Q I'll just set these out in front of you, Tim.

23 A Thank you.

24 Q So, on Exhibit 12, did you actually print this off or did  
25 somebody from your office do it?

1 A Somebody from my office.

2 Q Okay. So this says "page one of one" on the first page of  
3 Exhibit 12, correct?

4 A Correct.

5 Q And then the second page of Exhibit 12 also says "page one  
6 of one," right?

7 A Yes.

8 Q But it looks like it'd be related to the same address?

9 A Correct.

10 Q All right. Have you actually gone to this address  
11 physically in Sarasota?

12 A I have not.

13 Q All right. So the ownership on Exhibit 12 shows Kristen  
14 Rocks, correct?

15 A That is correct, yes.

16 Q Now, you might need to see Exhibit 10, but do you remember  
17 off the top of your head from Exhibit 10, which is the deed  
18 transfer from Mr. Heshelman to someone --

19 A Yes.

20 Q -- is it to Kristen Rocks?

21 A No, it was not.

22 Q It was to Monzons or something like that?

23 A Something like that, yes.

24 Q Okay. So obviously when this was printed off, the first  
25 page of Exhibit 12, there's been a change of ownership again?

1 A Appears to be.

2 Q Okay. Do you know anything about Kristen Rocks?

3 A It's a name that has come up in association with Mr.  
4 Heshelman. I don't know the exact association.

5 Q They're not married or anything as far as you're aware?

6 A As far as I'm aware, no.

7 Q Okay. But in any event as far as you're aware she's  
8 independently now purchased this property from the Monzons?

9 A Yes.

10 Q Has the Monzons --

11 THE COURT: I'm sorry, you got two different answers  
12 there.

13 THE WITNESS: I do not know --

14 THE COURT: All right.

15 THE WITNESS: -- how she --

16 BY MR. TRACY:

17 Q Has the Monzons name come up in any manner in this  
18 investigation other than with Exhibit 10 purchasing a piece of  
19 property?

20 A No.

21 Q That's the only way they've come up?

22 A That's the only way they've come up.

23 Q Okay. Do you know how much Kristen Rocks paid the Monzons  
24 for the property?

25 A I do not.

1 Q You do?

2 A I do not.

3 Q Okay. And then Exhibit 11 there's a purchase price that  
4 appears to be reflected of \$1 million, correct?

5 A That's correct.

6 Q That's also page one of one?

7 A That's correct.

8 Q But here it says -- here in the "results" line on Exhibit  
9 11 under the "Grantors" it says, "One pages at ten records per  
10 page." Is this all that came up regarding the sales related to  
11 this piece of property; do you know?

12 A I was not there when she ran the report but --

13 Q Why wouldn't something show up in terms of the transfer  
14 from the Monzons to Kristen Rocks?

15 A I don't know. I did not see that.

16 Q Okay. So do you know for sure whether or not Kristen Rocks  
17 was the one that paid the million dollars to the Monzons or  
18 whether it was the Monzons paying the million dollars to  
19 Heshelman? I mean, do we really know from what has been obtained  
20 so far?

21 A This is the date of transfer is 11/13 of 2008. This date  
22 of transfer was 10/19 of 2004.

23 Q This date of transfer here that you're looking on in  
24 Exhibit 12 it shows the grantor is a Joseph Ruby. Do you see  
25 that?

1 A I see that.

2 Q Okay. So is that somebody else that's in between here that  
3 may have purchased it?

4 A Could very well be, yes.

5 Q So we don't really know what's happened in terms of the  
6 transactions with this property from '04 to present?

7 A Correct.

8 Q Okay. And then on direct examination today counsel asked  
9 you a question about whether you knew anything about the Bowdoin  
10 address.

11 Now, Government Exhibit 1 from the other day, last  
12 Thursday, this is your 302 report in November of '06, correct?

13 A Correct.

14 Q And this is regarding a telephone call that you had with  
15 Mr. Heshelman at that point in time?

16 A Correct.

17 Q You were here in the states and he was in Switzerland?

18 A Yes.

19 Q By the way, before I forget just to clarify.

20 When we said last week when we were here on Thursday  
21 that the Swiss authorities knew something about the charges  
22 against Mr. Heshelman, did you actually mean Swiss authorities  
23 that work for the Swiss government or was it your people with the  
24 FBI or FBI affiliates over in Switzerland that knew?

25 A Both.



1 Q Both of them knew?

2 A Both.

3 Q Did you ever have communications with the Swiss  
4 authorities, the one that actually worked for the Swiss  
5 government?

6 A No. That was our legal attache who had direct contact with  
7 them.

8 Q So you don't know exactly what they know would have  
9 occurred through your --

10 MR. MEKARU: Your Honor, I'm sorry, I mean, this is a  
11 little beyond the scope of this question.

12 MR. TRACY: We're clarifying testimony that occurred  
13 last Thursday before this Court.

14 THE COURT: I recognize that this was not on -- that  
15 it was not brought up on redirect but under the circumstances I'm  
16 going to allow counsel the leeway to ask the question.

17 BY MR. TRACY:

18 Q Really my question is you didn't have the direct  
19 communications with anybody that were Swiss authorities that  
20 actually worked for the Swiss government?

21 A That is correct.

22 Q Okay. Now, back to the Bowdoin street address. In your  
23 302 in '06 I don't believe there's any mention of the Bowdoin  
24 street; is that right?

25 A That's correct.

1 Q Now, do you know who Special Agent John Cotter, C-o-t-t-e-  
2 r, is?

3 A I have spoken to him since, yes.

4 Q Okay. Besides an investigation regarding Mr. Heshelman,  
5 are you aware that Mr. Cotter interviewed Mr. Heshelman back in  
6 February of '03?

7 A I am aware of it, yes.

8 Q And, in fact, in the discovery in this case, which I  
9 presume you helped produce --

10 A Right.

11 Q -- the government's produced a copy of a 302 from February  
12 of '03 from Mr. Cotter, correct?

13 A Correct.

14 Q And I believe he might have been investigating an Allen  
15 Shepherd back then?

16 A Right.

17 Q And he interviewed Mr. Heshelman as part of that?

18 A Yes.

19 Q And Mr. Heshelman actually spoke with him and gave him some  
20 information?

21 A Correct.

22 Q Now, one of the pieces of information from this 302 again,  
23 Special Agent Cotter's in February of '03, it has both a  
24 Switzerland address and a US address for Mr. Heshelman, does it  
25 not?

1 A It does, yes.

2 Q Okay. And you've seen this before?

3 A I have, yes.

4 Q Did you see it even before your interview in 2006 of Mr.  
5 Heshelman?

6 A Before 2006, yes, I believe I did.

7 Q Okay. And the address that's listed there for US is the  
8 same Bowdoin Circle address in Sarasota, correct?

9 A That is not.

10 Q Oh, it's 541?

11 A Yes.

12 Q Is that a mistake or do you know?

13 A I believe it's a mistake but I'm not sure.

14 Q Okay. But you at least knew that he was on Bowdoin Circle,  
15 if I'm saying "Bowdoin" right or however it's supposed to be  
16 said.

17 A Yeah, once I read that interview. I don't recall exactly  
18 when I read that but, yes.

19 Q Okay. So when we look at Exhibits 8 through 12 or however  
20 many we want to, Bowdoin here, that address is 451, correct?

21 A Correct.

22 Q But in Special Agent Cotter's it's 541?

23 A Yes.

24 Q Are you aware of anybody who ever lived at 541?

25 A I'm not aware of that. I did not run that address.

1 Q So your inference would be that the numbers maybe got  
2 transposed?

3 A Possibly, yes.

4 Q Okay. But besides that Bowdoin street address there's also  
5 an address in Switzerland, correct?

6 A That is correct.

7 Q So it says "Michael Heshelman doing business as Investors  
8 First Ban-Corp," correct?

9 A Yes.

10 Q And then it gives an address on Nordstrasse in Zurich?

11 A Correct.

12 Q And I believe this would be an international phone number?

13 A Yes.

14 Q In an e-mail form as well?

15 A Yes.

16 Q And then also this address in Florida which may or may not  
17 be correct, and a Florida phone number as well?

18 A Correct.

19 Q All of that information you would have had access to some  
20 time in '03, '04, or '05?

21 A Yes.

22 Q Okay.

23 MR. TRACY: Excuse me one second, your Honor.

24 Nothing further, your Honor. Thank you.

25 THE COURT: Mr. Mekaru?

1 MR. MEKARU: No questions, thank you.

2 THE COURT: All right. Thank you. You may step  
3 down.

4 MR. MEKARU: Nothing further, your Honor. Thank you.

5 THE COURT: All right.

6 Anything further on behalf of the defense?

7 MR. TRACY: No, your Honor.

8 THE COURT: Closing arguments?

9 CLOSING ARGUMENT

10 MR. MEKARU: Your Honor, just a few things about the  
11 testimony.

12 There's just something I wanted to point out here;  
13 that this house in Florida was purchased as represented by the  
14 warranty deed in 1999.

15 The witness has indicated that she actually had  
16 garnered some sort of interest in the property in 1998 and then  
17 transferred it in 2003 to her brother Michael Heshelman so he  
18 could sell it because he apparently was in a better position to  
19 sell the residence, which ultimately happened in 2004.

20 Your Honor, in 2003 both the witness as well as the  
21 information provided pretrial services indicates that the  
22 defendant was in Switzerland. A little odd that the defendant in  
23 Switzerland was somehow closer in proximity and ability to handle  
24 a transaction of a sale in 2004 than Ms. Moore who was in the  
25 United States and residing in Michigan.

1           Your Honor, also regarding the transaction with the  
2 million dollar sale. The records indicated by pretrial services  
3 as well as the records produced by the FBI indicate in 2004 that  
4 the property was sold for \$1 million.

5           We don't have any idea what that property looks like  
6 but, nonetheless, the records indicate this is a million dollar  
7 sale.

8           Ms. Moore has testified that she had no knowledge of  
9 that sale or how much actually was involved in that transaction  
10 but that the sale was supposed to be for her benefit.

11           THE DEFENDANT: That's not true.

12           MR. MEKARU: So now we've got -- if you'd like to  
13 talk -- testify --

14           THE DEFENDANT: I've love to talk.

15           MR. TRACY: No, no, you're not talking.

16           THE DEFENDANT: I'd love to talk.

17           MR. MEKARU: Your Honor, so one of two things either  
18 happened here. Either the sale did, in fact, happen that was  
19 supposed to be for her benefit and that she was never told the  
20 property that she thought had minimal if any equity in it was  
21 sold for a \$750,000 gain, and that she was either lied to or  
22 there was a lie of omission.

23           Or she did, in fact, receive those proceeds and  
24 received some money and that she has -- that the witness has  
25 misrepresented that fact to this Court.

1           So I'm not willing to challenge Ms. Moore's  
2     credibility on this. Let's assume that she's taken the oath, she  
3     understands that, she's testified truthfully. Then the records  
4     indicate that she was essentially the victim of a \$750,000 sale  
5     that did not go to her benefit. All right.

6           Now, why is that important with respect to this  
7     defendant? Your Honor, we've indicated we consider the defendant  
8     to be a flight risk. If this Court were to issue a bond he would  
9     have to take an oath, take an oath that he would honor and appear  
10    as directed by this Court.

11          We would suggest that if the defendant was willing to  
12    lie to his own family about this sale, somebody who's clearly his  
13    closest relative, his only surviving member of his family, we'd  
14    have a little concern about his, you know, credibility and  
15    representing to this Court that he would appear as directed,  
16    number one.

17          Number two, the criminal history for this individual  
18    indicates that he has been through the court system multiple  
19    times and that he has been -- had demonstrated a record of non-  
20    appearance and absconding.

21          Now, those are for matters that were far less serious  
22    than he's facing today. This is a multi-million dollar fraud  
23    scheme. He's facing penalties that are -- and advisory sentences  
24    that are, as calculated by the government, in excess of ten  
25    years.

1           The pressure that's being placed on the defendant at  
2 this point would cause the government to believe that he has  
3 little interest to stay in the United States to appear on these  
4 charges.

5           Next question, does he have the ability to flee the  
6 United States to avoid these charges?

7           Well, as indicated by his past residents he's been  
8 living outside of the United States without any problems from  
9 2003 until 2009, and that his family contacts in the United  
10 States aren't so strong that he would feel the desire to come  
11 back regularly.

12           I think Ms. Moore indicated he came back once, maybe  
13 twice, to the United States. While they've been in contact the  
14 draw wasn't such that he would return on a regular basis.

15           He's traveled internationally. We've seized his  
16 passport, but as this Court's aware fraudulent documents do  
17 exist. They've caused problems. They would be available to an  
18 individual who has indicated that he has access to 500 million  
19 Euros, some excess of \$600 million.

20           Now, Counsel has queried as to whether that's his  
21 business or actually his. As the Court may recall from his  
22 statement to this Court as initial appearance he indicated that  
23 he has resources that would allow him to hire an attorney.

24           The Court asked Mr. Heshelman, "Do you have resources  
25 that would allow you to hire an attorney?"



1           The defendant: "In Switzerland, yes, sir. The  
2 problem -- may I speak, your Honor?"

3           "The Court: Yes" -- excuse me -- "Please do."

4           "The defendant: The problem is that I left  
5 Switzerland because the US authorities and Swiss government have  
6 locked all my accounts. I have no access to those accounts. In  
7 due time if allowed I would be glad to hire my own attorney but  
8 as of today I cannot."

9           "The Court: Excuse me. Go ahead."

10          "The defendant: And from what I understand they've  
11 just told me I have a bail hearing in a few days. I have no  
12 resource -- no source to access an attorney before then."

13          "The Court: What will it take as far as getting  
14 access to your assets in Switzerland so that you could use them?"

15          "The defendant: It would probably -- it would take  
16 me getting out on bail and probably about ten days."

17          The defendant has represented to this Court that he  
18 can get that money. Now, he would have access within ten days.  
19 It'd be our assessment that he would have the resources to fund a  
20 flight.

21          Your Honor, the defendant is a US citizen; was  
22 notified of extradition to come back to the United States rather  
23 than voluntarily appear -- and he doesn't have any obligation to,  
24 not suggesting that -- but he demanded an extradition hearing,  
25 was given a right to a hearing, and was ordered out of

1 Switzerland.

2 Now, on one hand the defendant obviously can exercise  
3 his rights. But when the question comes as to whether the  
4 defendant poses a risk of flight I'd ask this Court to consider  
5 the fact that the defendant wasn't willing voluntarily to come  
6 back to the United States.

7 THE COURT: Mr. Mekaru, can you give me the time line  
8 from when he I believe was arrested in Switzerland? Is that when  
9 he first knew about the extradition? That's question number one.

10 Number two, how long the extradition process took?

11 MR. MEKARU: Your Honor, as I recall the defendant  
12 was arrested by the Swiss authorities on Swiss allegations of  
13 misconduct in December of 2008. I believe it was actually in  
14 between Christmas and New Year's, maybe the 27th is my  
15 recollection, and we were advised that they had initiated this  
16 action and they were holding him on Swiss charges.

17 Now, that caused a query from the Swiss government  
18 because they knew, based on contacts with the FBI's legate, that  
19 we were interested in Mr. Heshelman to cause a query from them as  
20 to whether we were interested in them pursuing extradition  
21 because they had now located him which then triggered from us the  
22 positive response.

23 We then went forward with the extradition. The  
24 hearing I believe was in February of 2009, the 23rd comes to  
25 mind, thereabouts.

1           And then based on that presentation of the  
2 extradition between December and February the United States  
3 Attorney's Office along with the Department of Justice and the  
4 state department were putting together the extradition paperwork,  
5 advised and notified the Swiss authorities that we did want to  
6 seek extradition.

7           There was I think essentially a provisional warrant  
8 that was placed on the defendant and he was held in custody. We  
9 then perfected the extradition paperwork by the presentation of  
10 the documents and that that actual hearing was some time in I  
11 believe February of 2009.

12           The defendant was then -- there was sufficient  
13 finding of an extradition by the Swiss authorities and they  
14 ordered him extradited from Switzerland and back to the United  
15 States.

16           I believe going back to Exhibit No. 3, the decision  
17 was on February 27th, 2009, granting extradition. There was a  
18 delay in getting the logistics of the defendant being transported  
19 back to the United States.

20           Two deputy marshals from this district actually flew  
21 from the Western District of Michigan to Switzerland to secure  
22 his appearance and returned I believe it was March 27th, Friday,  
23 then he had his appearance in this court on the following Monday.

24           THE COURT: You just stated that the defendant  
25 exercised his right to protest the extradition?

1 MR. MEKARU: That's my understanding, your Honor. He  
2 was queried as to whether he would waive extradition and he  
3 declined to waive.

4 THE COURT: Does the official record indicate the  
5 basis for contesting the extradition?

6 MR. MEKARU: No, your Honor. Well, it might, your  
7 Honor, but we don't have those records.

8 THE COURT: Okay.

9 MR. MEKARU: We were just notified of the results.

10 THE COURT: Okay.

11 MR. MEKARU: Your Honor, I think at this juncture  
12 we've presented substantial information to suggest the defendant  
13 is a risk of flight under 3142, and that even if this Court were  
14 to impose some sort of conditions, even something along the lines  
15 of detention and tether, that that would not necessarily prevent  
16 the defendant from fleeing prosecution.

17 Tether, while we might be notified that he's out of  
18 range, does not necessarily permit the government to respond  
19 immediately. The only way we can safely secure his appearance is  
20 by having him held.

21 Thank you.

22 THE COURT: Thank you, Mr. Mekar.

23 Mr. Tracy?

24 CLOSING ARGUMENT

25 MR. TRACY: Thank you, your Honor. Let's pick up

1 with the Swiss stuff if you wouldn't mind, your Honor, and again  
2 I don't know that we have the full record in front of you.

3 What we do have is Government Exhibit 3 from last  
4 week. No indication of any hearing taking place over in  
5 Switzerland, your Honor.

6 And being mindful of what --

7 THE COURT: Did you say there wasn't one?

8 MR. TRACY: I don't know. I don't have the record.

9 THE COURT: An official representative of the United  
10 States government just represented there was a hearing.

11 MR. TRACY: But he wasn't there and the agent --

12 THE COURT: Well, yes, but some things are a matter  
13 of public record, and if an attorney of this court represents  
14 that it took place I'm going to give some credence to that under  
15 the circumstances.

16 Now, if that's going to be a contested issue we ought  
17 to find out about that. If you're actually going to maintain  
18 that there was not a hearing and that Mr. Mekaru's information is  
19 wrong -- which I think is a rather significant point -- I'm glad  
20 to take further proofs on this, but I want to know if that's a  
21 serious objection on your part.

22 MR. TRACY: Well, let me make a statement and then I  
23 guess we can follow-up.

24 I had the agent on the stand last week and the Court  
25 did as well. The agent would be in the best position to know

1 based on the documents. He was not aware whether there was a  
2 hearing or not, so that's what the current evidence is before the  
3 Court.

4           Rather than representations from counsel the agent  
5 then would be the interaction between the United States and the  
6 liaison over in Switzerland is not aware whether a hearing took  
7 place in Switzerland. So that's our current state of true  
8 evidence before the Court.

9           The letter that comes from Switzerland indicates that  
10 there was a decision not to lodge an appeal by my client but it  
11 says nothing about a hearing taking place. If the government has  
12 something else I would --

13           THE COURT: Mr. Tracy, what would the appeal have  
14 been from?

15           MR. TRACY: The decision --

16           THE COURT: You don't start with an appeal by  
17 definition so it has to be from something.

18           MR. TRACY: Correct, your Honor, but we're making  
19 assumptions. I mean, I don't know Swiss law very well, and maybe  
20 you do, maybe you've had other experiences and, you know, this is  
21 my first time through the Switzerland component of it.

22           It's a decision that's handed, you know, I don't know  
23 if it's more akin to an administrative decision in Switzerland, I  
24 don't know, your Honor.

25           But there's a decision in this March 17th, 2009,

1 letter that says here's what has been decided on February 27th,  
2 '09 by what they call their Federal Office of Justice, which  
3 granted extradition to the United States. I don't know what that  
4 was; I don't know whether it was based on what we would normally  
5 call a hearing or not.

6 THE COURT: All right.

7 MR. MEKARU: Your Honor, I'd like to object to the  
8 characterization of the witness's testimony. His testimony was  
9 that he was not present. He doesn't personally know whether  
10 there was a hearing. He was advised that there was a hearing,  
11 that he was in communication with the FBI legate, and the  
12 information he was receiving was that there was a hearing.

13 His personal knowledge, no. Let me clarify that,  
14 yes, he's acknowledging it was hearsay but that's what he was  
15 advised, not that it didn't happen.

16 THE COURT: And you don't recall it that way, Mr.  
17 Tracy?

18 THE COURT: Well, that could be. That could be.  
19 Again, it doesn't change the fact that this Court really doesn't  
20 have the benefit, at least in my mind, to know that over in  
21 Switzerland what exactly occurred at that hearing.

22 THE COURT: Well, and I think this is an important  
23 point.

24 Now, hearsay evidence is admissible at this hearing,  
25 and if the testimony was from the agent that there was a hearing

1 even though he personally wasn't there because he's assigned here  
2 in Michigan, that's one thing.

3 If he said he doesn't know if there was a hearing  
4 then that's something else, and we can check that. We have that  
5 testimony on tape and we can play that back.

6 So perhaps we ought to do that. The Court will do  
7 that before it renders a decision in this case.

8 MR. TRACY: What I understand happened in Switzerland  
9 was that charges were brought. Part of what was going on in  
10 terms of an actual challenge to any extradition was a challenge  
11 to those Swiss charges.

12 Remember, my client was in jail for about two months  
13 in advance of any decision here by their Federal Office of  
14 Justice. So he retained counsel or had counsel appointed, I  
15 don't know all those details at this juncture, your Honor, but  
16 had counsel in Switzerland that was challenging the charges,  
17 whatever those were in Switzerland.

18 And my understanding -- again, I've asked for the  
19 records to be sent from Swiss counsel they have. As you know, I  
20 was just appointed last week, I don't have those yet. My  
21 understanding --

22 THE COURT: You've done quite a bit in a very short  
23 period of time. The Court appreciates that.

24 MR. TRACY: My understanding those charges, and I  
25 don't know why they were dropped and maybe it has something to



1 do, I'm not sure, those charges have since been dropped.

2 Now, obviously my client, assuming that's correct,  
3 had the right to challenge those charges in Switzerland just like  
4 he would here. And then at the point in time of extradition, at  
5 least from what we have in Exhibit 3, he did not challenge the  
6 ultimate decision of the Federal Office of Justice that led to  
7 him being extradited.

8 THE COURT: I don't know what that means.

9 MR. TRACY: Well, it says right in here, your Honor,  
10 it says, "The subject renounced" -- is their verbiage -- "to  
11 lodge an appeal against the decision."

12 So there was no further challenge to the extradition  
13 by my client or his counsel after some decision was made by their  
14 office of Federal Justice in February of '09.

15 THE COURT: Fine. Did your client decline to waive  
16 extradition?

17 MR. TRACY: I believe that is correct, your Honor.  
18 And I believe, again if we had the benefit of the papers from  
19 Switzerland I think you'll see part of the reason for declining  
20 that was he was in the midst of challenging the charges that were  
21 pending against him in Switzerland.

22 THE COURT: Now, tell me the connection between those  
23 two things. It's one thing to contest Swiss charges in  
24 Switzerland against this Court.

25 MR. TRACY: Yes.

1 THE COURT: Extradition proceeding is entirely  
2 separate because they were trying to remove him to this country  
3 to face charges over here.

4 Now, why would he decline to waive extradition to the  
5 Court over here in this country because he's contesting some  
6 charges over in Switzerland?

7 MR. TRACY: Well --

8 THE COURT: I don't understand the connection at all.

9 MR. TRACY: Okay. Well, let's -- hopefully, you and  
10 I will never be in that position --

11 THE COURT: I hope so.

12 MR. TRACY: -- but let's just try to put ourself in  
13 Mr. Heshelman's shoes for a second.

14 You're picked up on what he at least believes are  
15 sort of, quote, unquote, "bogus charges," in Switzerland that  
16 apparently have been dropped at this time. And that in the  
17 context of that all of a sudden what also appears is that there's  
18 a request for you to be extradited from the Swiss country that  
19 you've now lived in for a period of time back to the United  
20 States.

21 The one is tainting the other. You're in the midst  
22 of being taken in by authorities. You're going to have a little  
23 bit of suspicion about whatever is going on and whatever actions  
24 are trying to be taken against you at that point in time. I  
25 think that's a pretty reasonable thing to go through in your

1 mind, your Honor, if you or I were in Mr. Heshelman's position at  
2 the time.

3 THE COURT: He had an attorney over there.

4 MR. TRACY: That's correct, and I --

5 THE COURT: That's what you said.

6 MR. TRACY: That's my understanding, he had an  
7 attorney.

8 And so I think the game plan was we need to get rid  
9 of any charges that exist within Switzerland and we have the  
10 right to challenge all of that, and if that's going to take some  
11 time to do, that may also require us not to agree to the  
12 extradition because if the extradition happens before those  
13 charges are ended we may not be able to ever clear that  
14 particular issue up.

15 Whether that was the right decision or not again I  
16 was not his counsel.

17 THE COURT: Are you saying that is what your client's  
18 decision was or are you speculating as to what your client may  
19 have done?

20 MR. TRACY: I've talked to him about it. Again, I  
21 don't have -- I don't really want to put him on the stand for  
22 these purposes as the Court can understand. I've talked with him  
23 about it and what he's represented to me is that is part of the  
24 decision that occurred between he and his counsel in Switzerland.

25 So, yes, I have -- it's not me speculating about what

1 he was doing. He's indicated that to me.

2 THE COURT: So you are proffering that your client  
3 declined to waive extradition because he wanted to fight the  
4 charges over in Switzerland?

5 MR. TRACY: That is correct, your Honor.

6 THE COURT: Which were dropped once he agreed to  
7 extradition?

8 MR. TRACY: Or they were dropped in advance of the  
9 extradition. The timing of it, your Honor, I'm not as clear on--

10 THE COURT: I see.

11 MR. TRACY: -- but pretty much close in time is my  
12 understanding.

13 So what I guess I'm saying is that that has to be --  
14 it'd be a little different if the Swiss authorities had picked  
15 him up simply based on these charges and that there was still  
16 this delay and some challenge had occurred.

17 We have to be mindful of the fact that there were  
18 actual charges brought in Switzerland that also were in the  
19 process of being challenged as part of that, and I'm just  
20 pointing that out to the Court so the Court can understand the  
21 context and what position my client and his counsel is in over in  
22 Switzerland.

23 Now, and I'll go through whatever -- I mean, that's  
24 about the end of the knowledge I have right now because again I  
25 don't have the paperwork from Switzerland at this point in time.

1           The sale of the home. You know, I don't know what  
2 occurred and I don't really think anybody in this courtroom does  
3 at this point, even Mrs. Moore who owned the home for a period of  
4 time doesn't have a recollection and, you know, why necessarily  
5 would she. It goes back almost a decade for her now since when  
6 she purchased the home and a little less than that since the sale  
7 to her brother.

8           One, I'm not sure \$250,000 was the price that was  
9 paid for the home. That's her best recollection to the Court or  
10 what she thought was the most. It could be 300; it could be 400;  
11 it could be 500, we don't know as we sit --

12           THE COURT: There's nothing to suggest that it was  
13 more than \$250,000. Why are you saying it could have been  
14 \$500,000?

15           MR. TRACY: Because reality based on what we have  
16 before us, your Honor, it could be a lower or a higher number  
17 because she's doing her best she can. She's offered to provide  
18 paperwork about what she actually paid for the home which I will  
19 try to obtain from her but again I don't have the benefit of  
20 that.

21           So what I think we should be a little cautious about  
22 saying there was a \$750,000 spread when there's really no true  
23 evidence to justify that conclusion based on what I've seen.

24           The million dollar sale, the agent apparently had  
25 records pulled. We have them in Exhibit 11 and 12. Again we

1 have no tie-in that that is exactly what was paid to Mr.  
2 Heshelman at the sale.

3 It appears that there was a sale to another Ruby  
4 gentleman afterwards and then after the Monzons and to Kristen  
5 Rocks or Rocks after that. We don't really know as we sit here  
6 today what has happened, who got any monies out of that sale.

7 The reality is is that there's very significant  
8 charges against my client. These charges are I think the main  
9 basis, if I understood from the government, as to why they have a  
10 concern about his risk of flight. Why we're going off on a  
11 tangent in terms of the sale of the home I'm not sure.

12 Mrs. Moore came before you today. She came and said,  
13 look, you know, I'm willing to take in my brother. My husband is  
14 willing to take in my brother. We're willing to take  
15 responsibility.

16 We've lived in Battle Creek a long, long time.  
17 That's in this district. We'll take the responsibility of  
18 getting him back and forth to court or over to my office or  
19 whatever this Court would allow. We'll put up the necessary bond  
20 for that.

21 The Court may or may not recall that besides Mrs.  
22 Moore, Angie the defendant's niece was here in court to support  
23 him last Friday. And his only -- his surviving aunt I believe of  
24 his parents' generation, Marjorie, was here in court to support  
25 him last Thursday, excuse me, as well.

1           So other family members were here besides Mrs. Moore.  
2     She, of course, came back and indicated what she's willing to do  
3     on behalf of, you know, the client as well.

4           In terms of the Florida probation issue for a minute,  
5     I also again, you know, we don't have the benefit of the full  
6     printout, your Honor, in terms of these charges.

7           I think when all is said and done we're going to find  
8     out that there was one charge made back in '89 or '90 related to  
9     a former company owned by my client that's some sort of  
10    insufficient funds check of \$1800 or something like that.

11          Ultimately those funds were paid. The business he and some  
12    partners were in was shutting down. Funds were not paid out.  
13    The check did not clear correctly. Ultimately it was paid.

14          Now, the real question for the Court is not so much  
15    that; it's what happened when he absconded or didn't show up for  
16    probation, and I believe that was in the '95 or '96 time frame.

17          Well, you heard today from his sister what was going  
18    on. And again this is not an excuse; he should have done what he  
19    needed to do.

20          He was up here taking care of his mother. He  
21    contacted the authorities down -- and remember his mother passed  
22    away in I think '96 or '97, Mrs. Moore indicated. He came up in  
23    1995, this is what his sister indicated today, to help take care  
24    of his mother. He did not go back to Florida until after she  
25    passed away.

1                   When he went back to Florida he lived there from the  
2 late '95-96 time frame --

3                   THE COURT: Say that again. You're saying her  
4 testimony was that he came up here and took care of their mother  
5 and stayed up here for how long?

6                   MR. TRACY: He stayed up here --

7                   THE COURT: She testified to this?

8                   MR. TRACY: She testified to both of those things but  
9 they were two different periods of time, your Honor. He took  
10 care of his mother in the '95 and '96 time period roughly before  
11 she passed away.

12                  THE COURT: When did the sister testify that she was  
13 -- that he was up here in 1995?

14                  MR. TRACY: For a long period of time, for months, is  
15 what she indicated. And then he went back and lived in Florida  
16 in I believe that same Bowdoin Circle residence for a period of  
17 time.

18                  So the Florida authorities who had some warrant  
19 apparently out for him or whatever, he was down there, he had a  
20 driver's license in Florida, he had all of that information for a  
21 period of time before he moved overseas. And he came back up  
22 here in the '99-2000 time frame to take care of his father, and  
23 you will recall that Mrs. Moore's testimony was the father passed  
24 away in December of 2000.

25                  THE COURT: I don't recall the testimony that way.



1 MR. TRACY: You don't recall any of that testimony,  
2 your Honor?

3 THE COURT: I'll have to review the record. I don't  
4 recall it quite as clearly as you do about his being up here all  
5 that time.

6 MR. TRACY: Yeah, she had indicated in both  
7 instances.

8 THE COURT: Am I mistaken on that, Mr. Mekaru?

9 MR. MEKARU: No, your Honor. I asked the agent the  
10 same thing and we're both thinking that that's why he was sending  
11 money is that he wasn't coming up.

12 And we asked about whether he'd done much to support  
13 family when the mother was in need of care, and my recollection  
14 was that he didn't do much.

15 THE COURT: I'll play back the testimony. We have it  
16 recorded and if it comes out the same way you recall it, Counsel,  
17 I'll give you the benefit of the doubt certainly.

18 MR. TRACY: That's fine. We also have Mrs. Moore --

19 THE COURT: I don't recall it the way you're  
20 representing it.

21 MR. TRACY: We still have her here. I mean, if we  
22 want to clarify briefly that's --

23 THE COURT: Well, it's up to you, Counsel.

24 MR. TRACY: I'll call her back to the stand then on  
25 that issue, please.

1 MR. MEKARU: If I may, what is the significance of  
2 her --

3 THE COURT: Well, apparently this has to do with  
4 where the defendant was when he was in violation of his probation  
5 down in Florida.

6 MR. TRACY: If the government's taking the position  
7 that he absconded one time and that's a flight risk, the Court  
8 should have the benefit of knowing rightly or wrongly what he was  
9 doing during that time period, and that's the relevance of it.

10 THE COURT: I'll take the testimony.

11 You are reminded that you are still under oath.

12 THE WITNESS: Yes.

13 BRENDA MOORE, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

14 DIRECT EXAMINATION

15 BY MR. TRACY:

16 Q Well, I didn't want to do this with you twice in one day.  
17 I'm sorry. Okay. Remind us again, do you remember, I think you  
18 said it was the spring time that your mother passed away; is that  
19 correct?

20 A She passed away in April of '96.

21 Q Okay. And prior to that did you assist with her care  
22 before her death?

23 A She was in her home. My brother was caring for her then.

24 Q Okay. And were you helping as well when you could?

25 A Yes, when I could.

1 Q Okay. How long was she in her home in a condition, if you  
2 will, that she needed assistance; if you can recall?

3 A Let's see, at least a year.

4 Q Okay. And did your brother stay that whole year or was he  
5 back and forth at points in time?

6 A It's difficult to remember all of that but I know he cared  
7 for my mother at least for six to eight months before her death,  
8 and then continued to care for my father.

9 Q Okay. And so that, in the best of your recollection, might  
10 have been in the '95 or '96 time frame?

11 A Yes.

12 Q Okay. And from the records that were indicated I believe  
13 by the judge earlier, it was your understanding he may have  
14 absconded or did something in violation of his probation down in  
15 Florida roughly in that same time frame?

16 A I knew that he was on probation but I didn't know anything  
17 about his other stuff.

18 Q Correct. That's what you testified before about?

19 A Yes.

20 Q Now the Court's drawn to your attention that his violation  
21 down there occurred roughly in that same time frame?

22 A I guess.

23 Q Okay. Now, in terms of your father, was he already in a  
24 condition in the mid-90s that he also needed some assistance?

25 A My dad had dementia while my mother was sick and quite

1 severely afterwards.

2 Q Okay.

3 MR. TRACY: Excuse me one second.

4 THE COURT: Mm-hmm.

5 BY MR. TRACY:

6 Q Did your father have surgery at some point?

7 A Yes.

8 Q And do you recall roughly when that would have been?

9 A No, I don't know exactly but I know he had back surgery.

10 Q Okay. Was that part of the reason that your brother came  
11 up here?

12 A Yes.

13 Q And when your father had that surgery was your mother still  
14 alive?

15 A Yes.

16 Q Okay. And is that part of the reason why your father  
17 couldn't help care for her?

18 A They couldn't do anything for each other.

19 Q Okay. So once your mother passes in the spring of '06 do  
20 you recall whether your brother stayed here for a period of time  
21 to also assist with your father?

22 A Yes, I know he did for at least a year-and-a-half.

23 Q Okay. And then at some point in time your father then  
24 moved into your home care company?

25 A Yes, my assisted living home.

1 Q Okay. And at that point in time Michael would be up here  
2 less in terms of assisting?

3 A Yes.

4 Q And is your recollection he lived down in Florida at that  
5 point?

6 A Yes.

7 Q Okay.

8 MR. TRACY: Nothing further, your Honor.

9 THE COURT: Cross-examination on that point?

10 CROSS-EXAMINATION

11 BY MR. MEKARU:

12 Q Okay. So prior to April of 1995 would it be fair to say  
13 the defendant was down in Florida?

14 A Prior to April of 1995?

15 Q And let me maybe a little bit more in terms of how the  
16 schedule went here, the time line. April of '96 your mother had  
17 passed away. And you said that for about a year or so prior to  
18 her passing that your brother had come up to help and stay with  
19 her?

20 A I said I thought he cared for her about six to eight  
21 months, somewhere in there --

22 Q Six to eight months?

23 A -- prior to her death.

24 Q Okay.

25 A I'm not sure though exactly about the dates but I know it

1 was for a good period of time.

2 Q Six to eight -- I'm sorry, so six to eight months, so that  
3 would be some time going backwards that would put it into maybe,  
4 let's see, the fall of 1995 that he came up?

5 A No, it's just too hard for me to remember the dates  
6 exactly. I just know that he cared for my mother for quite a  
7 while in her home.

8 Q Okay. We'll do it as a year. So, let's say she passed in  
9 April of '96, let's give him a year that he was up in Michigan  
10 helping, that would be April of 1995.

11 THE DEFENDANT: Your Honor, I came up for my father's  
12 surgery.

13 MR. MEKARU: Your Honor, I'd ask the defendant that  
14 if he wants to take the stand and testify --

15 THE COURT: Counsel --

16 MR. TRACY: Okay, I'll talk to him.

17 THE DEFENDANT: I'm sorry, your Honor.

18 THE COURT: Mr. Mekaru, you may proceed.

19 BY MR. MEKARU:

20 Q Well, the records of probation, he wasn't in Michigan when  
21 there was a probation violation then in September of 1994,  
22 correct?

23 A I guess if I knew my father's surgery I could answer it  
24 more clearly for you and I can't.

25 Q All right. Or October of 1993 or July of 1990 or January

1 of 1990?

2 A I can't answer that. I don't know. I don't remember.

3 Q So really your testimony then isn't really of any help as  
4 to his location at all as to why he's violating his probation,  
5 would that be fair to say, because you don't --

6 A Say that again?

7 Q You don't know the timing at all of why he's violating  
8 probation, right?

9 A I don't know the timing of it. I don't.

10 Q Or when he's violating probation or where he is or what --

11 A I didn't know anything about it.

12 Q So your testimony only is that you can account for his  
13 whereabouts some time in April 1995 through April 1996 and then  
14 going forward?

15 A If my father's surgery was prior to that then he was here,  
16 if it wasn't then he wasn't, and I don't remember when my dad's  
17 surgery was that long ago.

18 Q And did you have any discussions with your brother as to  
19 what was more important taking care of some of these court  
20 matters in Florida or coming back up?

21 A We had no discussion.

22 Q Okay. No idea whether he could just go down there, report,  
23 pay the fine, serve a little time, and then come back?

24 A We had no discussion about it.

25 Q No discussion of the fact that he might be violating his

1 terms of probation?

2 A We had no discussion about it.

3 Q Counsel has suggested this is only one incident but did you  
4 have any knowledge of the fact that he had, in fact, been charged  
5 on one, two, three, four, five different times?

6 A No.

7 Q All for writing bad checks?

8 A No.

9 Q Would that might have affected your decision about letting  
10 him handle the sale of your home if you had known that he had  
11 been involved in five charges for writing bad checks?

12 If you had known that he had been charged multiple  
13 times in writing back checks, would it have changed your mind  
14 about letting him sell your house for you?

15 A It probably wouldn't have.

16 Q Thank you.

17 THE COURT: All right. Any other questions?

18 MR. TRACY: Nothing further, your Honor.

19 THE COURT: Thank you. You may step down.

20 MR. TRACY: Okay, we can go back over any of that,  
21 your Honor, if you want to but I think the point that I was  
22 trying to make is there in terms of the best of her recollection  
23 about what he was doing.

24 In terms of the access to money issue we went over  
25 that already last week. There's no indication in the evidence



1 that's before this Court that he has any sort of direct access to  
2 any monies. At this point he's filled out the form. I've been  
3 appointed as counsel. I can assure you I have not received the  
4 monies that are attributed to whatever is supposedly over in  
5 Europe.

6 What was indicated in the statements that was Exhibit  
7 4 or 5 of the letters over to the US Consulate in Switzerland was  
8 that there was some account with UBS over in Switzerland through  
9 a company and that he may or may not have access at that point in  
10 time. That's what we have.

11 At this point in time, you know, the money situation  
12 I think is a very big question mark in terms of what he's able to  
13 do.

14 I believe the statement he made is I heard it from  
15 counsel because I wasn't, again, here on his initial appearance,  
16 was that he might be able to raise funds for retaining private  
17 counsel which, again, that may or may not be true at this point.

18 What that has to do necessarily with anything in  
19 terms of him having funds to get out of the country or whatever,  
20 again, I don't see a tie-in with respect to that.

21 We've gone over the family member situation. I think  
22 we've already gone over the limitations, whatever restrictions or  
23 limitations this Court wishes to place on my client in terms of a  
24 tether or other monitoring, whatever this Court deems  
25 appropriate, we will agree to.

1           Mrs. Moore apparently also understands that because  
2 both I and the Court had an opportunity to ask her about if some  
3 of that needs to take place in her home she is agreeable to that  
4 as well.

5           I mean, one other issue maybe not technically, your  
6 Honor, an issue in terms of risk of flight but I think it's  
7 important to point out. This is going to be a very document  
8 intensive case. I've already gotten a first batch of documents.  
9 It's very hard to prepare any sort of trial but particularly a  
10 trial like this when the client is in lockup and I am having to  
11 go visit him to go through very difficult documents.

12           Both of his co-defendants are out on bond. Neither  
13 of them are in this state. I think there's limitations that can  
14 be placed upon him by this Court that will allow him to remain  
15 here, to show up for trial if that's where this case ultimately  
16 goes, and allows us to properly and effectively prepare for the  
17 trial.

18           So I thank you for listening and thank you, your  
19 Honor, for your patience in terms of additional testimony.

20           THE COURT: Well, thank you for a very vigorous  
21 argument on behalf of your client.

22           Mr. Mekaru, you have the burden of proof in this  
23 matter. You can certainly have the last word if you have  
24 anything further that needs to be talked about.

25           MR. MEKARU: Your Honor, you just had queried the

1 parties as to whether there's much information about the  
2 extradition. I just would suggest the Court to refer back to the  
3 letters written by the defendant about his extradition, the fact  
4 that he felt that the charges were fraudulent and that he was by  
5 the tone of these letters contesting his extradition.

6           Regarding his statement in court I do have a copy for  
7 counsel of the transcript from that initial appearance. And,  
8 your Honor, while it's suggested there's no evidence the  
9 defendant's own statement was that he could get -- "How long  
10 would it take to get access to your assets in Switzerland?" "It  
11 would take me being out on bail and probably about ten days."  
12 That was his own representation to this Court about having access  
13 to funds.

14           Thank you.

15           THE COURT: The issue before the Court is whether the  
16 government has shown by a preponderance of the evidence that  
17 there are no condition or combination of conditions that will  
18 assure the presence of the defendant for future court proceedings  
19 and/or whether the government has shown by clear and convincing  
20 evidence that there is no condition or combination of conditions  
21 that will assure the safety of the community.

22           This argument appears to be, one, that he is a flight  
23 risk rather than a danger to the community. I don't think I've  
24 heard any argument made that he's a danger to the community.

25           And I will stand corrected if that's not the case,

1 Mr. Mekaru, but otherwise I'm going to address the flight issue.

2 MR. MEKARU: Only a flight risk, your Honor.

3 THE COURT: All right. Thank you.

4 The grand jury has found probable cause to believe  
5 the defendant's committed a number of financial crimes, these are  
6 listed in the Indictment, and involve -- and they range from wire  
7 fraud to money laundering and they carry some significant  
8 sanctions as the government has pointed out in its motion to  
9 detain which coupled with the defendant's age would, if he was  
10 put in prison, would put him there until he's possibly quite old.

11 That's one factor, I suppose, that ought to be  
12 considered.

13 But I think though that we have to look at the track  
14 record of this defendant because there are three defendants that  
15 face the same situation, I suppose.

16 I'm not particularly concerned about what happened to  
17 the other two defendants. I didn't sit on their cases, I don't  
18 know the evidence that was presented, and if they're out on bond,  
19 fine, but I don't know the situations at all in those cases.  
20 Those do not dictate what happens here any more than if they had  
21 been detained that I would automatically detain this gentleman.  
22 So it's simply not an important consideration.

23 So we look at the background of this individual  
24 defendant because what the government and the defense are asking  
25 the Court to do is make a prediction about this defendant's

1 behavior in the future.

2 And I'm not sitting here as a judge as to what he did  
3 in the past and punishing him for that if he committed a crime,  
4 rather, I'm trying to figure out what he's likely to do in the  
5 future, and the best way we have of looking at that, which is  
6 something of an exercise in speculation, is to look at a past  
7 history.

8 In this case the defendant has been previously  
9 convicted in Florida on a couple of charges for passing a  
10 worthless check on a couple of occasions, but that was back in  
11 '89 and '90.

12 His track record since then was less than impressive  
13 as far as how he conducted himself once he was under the  
14 authority of the Court. In other words, on probation, which is  
15 tantamount to what we're talking about here. If we place him  
16 under the trust of the Court will he abide by the Court's rules  
17 and regulations including appearing in court?

18 When he was given that option down in Florida he  
19 violated probation in July of 1990. Probation was modified and  
20 extended in October of 1993. There's another probation violation  
21 and probation was revoked and he was put under two years  
22 community control.

23 In September of 1994 he apparently had been returned  
24 to probation and he again violated. In May of 1995 there was  
25 again a probation violation. Community control was terminated

1 and he was ordered to jail for the weekends, and then he was  
2 placed back on probation.

3 And in November of 1995 there was another probation  
4 which resulted in a warrant being issued for his arrest, and the  
5 record shows that he absconded from that probation in February of  
6 1996. That warrant remains outstanding, and that means it's been  
7 outstanding for 13 years.

8 I should note there were at the same time of the  
9 other two charges of worthless checks, there was apparently  
10 another conviction for insufficient funds in a fraud case.

11 The probation violations for each of these three  
12 offenses correspond to each other so I suspect that he was  
13 sentenced essentially at the same time as to all of them, put on  
14 probation, and then each time he violated probation he violated  
15 it as to each charge, but there were all those individual  
16 instances of probation violations.

17 At least one reason he hasn't been back in Florida is  
18 the fact that he has been in Switzerland for some time. He has  
19 traveled freely around Europe or other countries at least but  
20 never returned to this country. If he did he never cleared up  
21 the probation violation matter and the outstanding warrant  
22 against him.

23 The representations before the Court from the  
24 government are that he declined to waive extradition when given  
25 the opportunity. He declined to appeal from a determination

1 there but apparently declined to waive it in the first instance,  
2 and the explanation given by Mr. Tracy was that he wanted to stay  
3 and fight charges brought by the Swiss authorities against him  
4 for apparent violations of Swiss law.

5           However, once he -- at least those charges have now  
6 gone away. I don't know if that was due to his counsel proving  
7 they were no good or simply because the Swiss authorities saw no  
8 reason to continue to pursue them once he was extradited to this  
9 country.

10           But perhaps more of that will come out. We don't  
11 seem to have all the paperwork. It appears from what I have  
12 heard reliable evidence that he was afforded a hearing of some  
13 sort over there, declined to waive extradition, it was a  
14 contested matter, he lost and declined to appeal.

15           The Law Enforcement Information Network also reveals  
16 the defendant has used three aliases in addition to his own name.  
17 Perhaps those are misspellings although it's not that difficult  
18 to spell Heshelman. It's hard to believe there are three  
19 different misspellings of them in the record, one of which is  
20 Michael Hersher. But the fact that a person is willing to  
21 proceed under an alias is one more fact the Court needs to  
22 consider in determining how reliable he would be if he was  
23 released on bond.

24           Then there is the issue of whether or not the  
25 defendant would have the resources to flee to avoid what might be

1 a relatively lengthy sentence, particularly at his age, if he  
2 were convicted.

3 It is true that Mr. Heshelman spoke at the initial  
4 appearance and said that he could obtain funds. The pretrial  
5 services report, however, reflects statements made since that  
6 time by Mr. Heshelman stating that he denied possession of any  
7 personal assets. He reports possessing 500,000 -- it says  
8 500,000 Euros but it's translated into \$674 million -- not  
9 500,000, it looks like 500 million. I can't tell because the  
10 commas are in the wrong place. The number doesn't make any  
11 sense.

12 It's been translated into American dollars, however,  
13 in the amount of \$674,854,906 in US currency in a trust located  
14 in Switzerland under a business name attributed to him, Investors  
15 First Limited, against which there are no liabilities.

16 There's been absolutely no suggestion that that trust  
17 or his business is controlled by anybody else but him so he, in  
18 effect, is representing there's \$674 million available in  
19 Switzerland, certainly enough to allow him to travel readily in  
20 other parts of the world and never have to return to this  
21 country.

22 There are, as far as liabilities are concerned, there  
23 are some federal tax liens that have been filed against him in  
24 this country for a total of \$16,000.

25 His records to the ambassador in Switzerland



1 apparently written while he was detained also talked about having  
2 ability to obtain funds, too, as I recall, but the letters speak  
3 for themselves.

4 In short, while Mr. Tracy raises a variety of  
5 challenges to all of the evidence it appears that we have a  
6 person who has not been cooperative while on probation to state  
7 authorities, who absconded from the state courts, who had a  
8 warrant outstanding for 13 years, much of that time he spent in  
9 Switzerland.

10 He needed to be extradited from Switzerland to be  
11 brought back here. He has more than adequate funds; in fact, he  
12 has astronomical funds if he is to be believed once he gets  
13 access to them which would make flight quite possible facing the  
14 charges he's facing.

15 I appreciate his sister coming in here and  
16 testifying. Whether he's been candid with his sister or not I  
17 don't know. Perhaps Mr. Tracy is right, perhaps she paid more  
18 than 250,000 for the house, although, I think she might remember  
19 it if she paid 500,000. But that would still leave 500,000  
20 unexplained for. The date of the sale or the records produced to  
21 the Court show that the property was sold for \$1 million when Mr.  
22 Heshelman sold it.

23 I don't know what happened to that \$500,000 or  
24 \$750,000 and his sister obviously doesn't know. I think she  
25 would have remembered if there had been that much profit on the

1 house. I doubt that would have slipped her mind.

2 When everything's said and done I think the  
3 government has shown by a preponderance of the evidence that  
4 there are no conditions that will assure Mr. Heshelman's presence  
5 in future court proceedings in this matter and very likely we'll  
6 have to simply extradite him again from other country. I don't  
7 know what other conclusions to draw from this evidence so  
8 defendant's ordered detained pending trial in this matter.

9 THE COURT: All right. Thank you.

10 (At 10:30 a.m., proceedings adjourned)

11

-- -- -- --

CERTIFICATE

I, Patricia R. Pritchard, CER 3752, Certified Electronic Court Reporter for the State of Michigan, do hereby certify that the foregoing pages, 1 through 91, inclusive, comprise a full, true and correct transcript, to the best of my ability, of the proceedings and testimony recorded in the above-entitled cause.

April 22, 2009

Patricia R. Pritchard /S/  
Patricia R. Pritchard, CER 3752